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No. 95-1165

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

THOMAS W. MOORE, MARY L. MOORE - PETITIONERS

VS.

PATTERSON, BELKNAP, WEBB & TYLER, ET. Al. - RESPONDENTS

PETITIONERS' REPLY BRIEF TO RESPONDENTS' BRIEF IN OPPOSITION

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REASONS OPPOSITION BRIEF SUPPORTS THE GRANTING OF WRIT

1. PBW&T'S FILING A BRIEF IN OPPOSITION RAISES A "**RED FLAG**"!

2. PBW&T'S ARGUMENT AGAINST TOM **QUESTION** (I) FAVORS WRIT GRANT!

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REASONS OPPOSITION BRIEF SUPPORTS THE GRANTING OF WRIT

1. PBW&T'S FILING A BRIEF IN OPPOSITION RAISES A "RED FLAG"!

PBW&T knows the tiny percentage of "Petitions" that are GRANTED primarily without "Opposition". The NYAG declined to file opposition. Yet the NYAG represents more respondents than PBW&T. PBW&T represents itself and Mr. Winter. PBW&T in this Petition does not represent **seven of the nine alleged respondents** that PBW&T, under Fed. R. Civ. P. 11 falsely, claims to represent on its Brief Cover page front and back! WHY? TOM has not named these seven alleged PBW&T respondents in our Petition. TOM does not deny that TOM NYS attorneys failed to file a civil rights complaint in federal court within 3 years of Mary's job termination. 2d Cir. raised this (new) grounds for eliminating Rockland et. al. as Respondents. This is why TOM did not Petition against these seven Respondents. PBW&T, by silence, **admits the truth** of approximately **90%** of TOM Petition including: TOM "**QUESTIONS PRESENTED**" (II), (III) and (IV). TOM will separately address the 10% of TOM Petition that PBW&T does argue. Clearly the "**Red Flag**" that PBW&T raises is not worth arguing 10% of TOM Petition while by silence - **admitting** - 90% of TOM Petition. Why did PBW&T submit this Opposition Brief? The reason is PBW&T believes that by submitting (on its false and totally improper USSC Cover front and back) the names of these 121 VIPs that these VIPs will prejudice the USSC examiners of TOM Petition into denial of a Writ. This is the **same tactic** that PBW&T used successfully in four prior courts and two court systems for 5½ years. If PBW&T's tactic works the Motto of the USSC "**equal justice under law**" will be abandoned!

However, there is a second reason why PBW&T desperately needs to stop TOM Petition before a Writ Hearing. TOM Appendices constitute about 1% of the record at four courts. TOM record is absolutely the last: law, legal arguments and facts that PBW&T **wants to be examined by impartial federal Judge and jury.**

2. PBW&T'S ARGUMENT AGAINST TOM QUESTION (I) FAVORS WRIT GRANT!

PBW&T's Brief almost **entirely** argues TOM QUESTION (I) on: pg. i (all 3 QUESTIONS), pgs. 2 & 3 2d Cir. Local Rules 34 (c) & (d), pg. 8 (last par.), pg. 9 (pars. 1 & 2), pg. 11 alleged reasons (1) & (3), pg. 12 (entire pg.), pg. 13 (par. Third). PBW&T's eight pages out of 13¼ pages are totally devoted to one issue, that TOM would be grossly negligent if TOM did not ask the examiners of 95-1165 - after reading Respondents Brief - to refresh their memory of TOM Petition pgs.: (i), (2), (3), (5), (6), (7), 1st par. on (8) and **Appendix A** pgs. 1a through 15a.

Yet there exist law and facts, not mentioned in TOM Petition, that aid the examiners' knowledge on this crucial issue. PBW&T on 11/14/90 discovered:

> Page 7 of 50H Deposition of Mary L. Moore by PBW&T lines 18 through 23: (PBW&T) 'Have you ever been deposed before?' (Mary) 'No.' (PBW&T) 'Have you ever been a party to a lawsuit?' (Mary) 'No.' Mary from 8/90 through 4/29/93 was represented by NYS experienced trial and appellate attorneys who assisted Mary at this 50H Deposition.

From 4/30/93 through the future of this Case Tom has/will fully represent(ed) Mary and Tom. Mary's total assistance has been to sign various documents where Tom asked Mary to sign. Therefore, Mary's legal knowledge is only slightly advanced from her legal knowledge on 11/14/90. Mary never prepared a Motion at any court, much less under the special requirements of 2d. Cir. Mary **totally relied** upon the written statement by 2d Cir. that Tom was entitled to represent his spouse at the 2d. Cir. Mary could not have received notice of oral argument scheduled on 10/12/95 until 9/18/95 at 5:00 p.m. Tom was admitted into Saint Vincents Hospital on 9/16/95 for two weeks of massive antibiotics and chemotherapy intravenous therapy and twenty radiation treatments. Mary notified Tom some time on Tuesday 9/19/95.

Tom stated: 'No hearing should have been scheduled since I made a good faith effort to notify 2d. Cir. on **8/3/85 of my emergency condition.**' Mary said 'What must I do?' Tom said 'submit a Motion for a postponement.' Mary said 'it is impossible for me to prepare a Motion.' Tom said 'do your best.' Tom asked Saint Vincents' clerical staff who said: 'Your **8/3/95 Notice** that you prepared had never been mailed to 2d. Cir.' Tom asked Dr. Ng: 'to submit another notice.' This resulted in **Appendix A** letters on pages 6a and 7a.

Tom asserts, under these circumstances, two notices to 2d Cir. are more than sufficient to obtain a postponement under 2d. Cir. Local Rule 34. Tom was not released from Hospital until 9/30/95 and was physically unable to travel to NYC until 10/17/95 ie. 5 days after scheduled Oral Argument. Moreover, not until 11/11/95 was Tom able to begin to prepare a Motion to 2d. Cir. (See Appendix A Affidavit pgs. 2a through 7a)

PBW&T Brief pg. 7 argues that: 'the Clerk of the Court, by letter dated October 7, 1995, notified Ms. Moore the Court was unable to grant an adjournment of Oral Argument. The Clerk added, however that the Court would allow Ms. Moore to argue on Mr. Moore's behalf as well as for herself as appellants pro se. (Clerk Letter. Pet. App. A 8a). The Moore's declined to accept this invitation from the Court.'

In light of all facts aforestated in TOM REASON 2 under any equitable examination, PBW&T's Brief arguments against TOM Petition **QUESTION** (I) are **very unpersuasive**. Moreover, TOM equitable facts **are re-enforced by law** (see below).

2d. Cir. not only denied postponement on 10/6/95 but also denied TOM 11/15/95 Motion **Appendix A** 1a through 15a on 11/27/95 by a fourth federal Judge. WHY? No reason is given in the 10/6/95 letter or on the 11/27/95 Denial that completely overturns 2d. Cir. Local Rules 34 (c) and (d).

U.S. Constitution opposes PBW&T's (pg. 12 last four lines) argument: "Finally, the decision to grant or deny oral argument in accordance with the Local Rules of a Court of Appeals is a fact-specific inquiry that does not raise important legal questions for this Court's review.'

TOM aforementioned facts constitute clear Civil Rights Violations "Under Color of State Law" under 42 USC § 1983 by four federal Judges by conspiracy with PBW&T to violate the 5th and 14th Amendments. Local Rules 34 (c) and (d) in 2d. Cir. apply to residents of each of the states covered by 2d. Cir. Rule 34(c) "-in the event of an emergency, such as unforeseen illness of counsel" **(postponement will be granted)**. 2d. Cir. Local Rule 34(d) "-each of the parties will be given an opportunity **to file a statement setting forth reasons** for hearing oral argument. Oral argument will be allowed in all cases except those in which a panel of three judges, after examination of the briefs and record (except for three reasons stated in PBW&T pg. 3). TOM **statement guaranteed** under Local Rule 34(d) should now be re-examined by the USSC examiner (see **Appendix A pages 9a through 15a**).

TOM Statement is not: (1) "frivolous", (2) 2d. Cir. did not "authoritatively decide" (a) PBW&T's liability in line with USSC Decision in Dennis, supra. or (b) Cuomo's (80%) or alternatively (c) NYS Judiciary custom to violate the U.S. Constitution and (d) all six other defaulting attorneys (20%) Qualified immunity liability in Burns, Forrester, Malley, Mitchell or Harlow, supra. (see Table of Authorities cited page ii herein), (3) although law covering all these matters (Appendix A Statement Pgs. 9a through 15a) **IS** contained in TOM 2d Cir. Appellants Brief and Reply Brief, 2d. Cir. refused to even read TOM Briefs. Therefore "**the decisional process would be significantly aided by** (2d. Cir.) **reading pages 9a through 15a**".

TOM asserts that TOM has been discriminated against four times by 2d. Cir. denying both 34(c) and (d) to TOM on two different dates. The U.S.

Constitutional Provisions violated are "Due Process of Law" under the 5th and 14th Amendments and "Equal Protection of the Laws" under the 14th Amendment. TOM further states that PBW&T conspired with four or five federal Judges to effect these Civil Rights violations as participants "under Color of State Laws". The USSC may decide to hold federal Judges immune (but **no judicial act** and no hearing occurred, at least, at the 2d. Cir.). However, PBW&T pursuant to Dennis, supra. as private participants are liable for these four civil rights violations "Under color of state laws" regardless of judicial immunity.

> PBW&T's Brief argues on pages 10 & 11: 'There is no assertion by Petitioners that the decision of the Court of Appeals involves an area of conflict among circuit courts. Similarly, there is no assertion that the Court of Appeals misapplied Supreme Court precedent on an important federal question, or that the Court of Appeals decided an important question of federal law that has not been, but should be, settled by the Supreme Court. Finally there is no assertion that the Court of Appeals acted in any way as to require the exercise of the Supreme Court's supervisory power."

2d. Cir. had from receipt of both Appendix A letters on pages 6a & 7a (on or about 9/27/95) through 11/27/95 full opportunity to provide due process of law and equal protection of the laws. 2d. Cir. denied these to TOM. This denial of 5th and 14th Amendment rights was disguised as denial of Local Rules 34 (c) & (d) as-of-right legal process guaranteed to all parties. TOM hereby asserts that the Court of Appeals by refusing to follow its own law leaves TOM with no recourse other than Petition the USSC to "**exercise its supervisory power**" by granting TOM Writ of Certiorari.

PBW&T page 12 states: "The Courts of Appeals are entitled to make rules limiting oral argument. Fed. R. App. P. 34(a); 2d. Cir. R. 34 (d)" - This means that each circuit can have different rules. TOM asserts that 2d. Cir. 10/18/95 and 11/27/95

decisions of the Court of Appeals involves conflict among the circuit courts favoring USSC grant of TOM Writ of Certiorari.

PBW&T (and NYAG) by silence admit that of TOM **103 citations** shepardized from 1st, 2nd and 3rd Cir. under Dennis, supra. since 1980 - not one of these 103 Cases grants plaintiffs damage award against an attorney conspiring with a state Justice of Judge. TOM asserts that these facts show that the 10/18/95 2d. Cir. release of PBW&T and Winter Esq. because their state agent co-conspirators allegedly had some immunity and PBW&T/Winter in TOM "Complaint failed to allege any governmental action by these two defendants' violates Dennis supra. Moreover, the admitted 40 citations of Dennis supra. by 2d. Cir. since 1980 constitute evidence that **all three TOM Panel Judges intentionally misapplied Supreme Court precedent on an important federal question** favoring a USSC grant of Writ of Certiorari to TOM.

> PBW&T Brief argues on page 13: 'Third: A summary order is permissible. See 2d. Cir. R. § 0.23. Such a common action does not raise important legal issues and does not call for an exercise of the Supreme Court's power of supervision or review.'

In direct opposition TOM addresses not only all prior facts and law relating to TOM Petition **QUESTION** (I) but also the silent **admission** by both PBW&T and also NYAG of TOM Petition facts and law relating to TOM **QUESTIONS** (II), (III) and (IV). 2d. Cir. Local Rule § 0.23 is alleged by PBW&T (and 2d. Cir.) to be the entire authority by both 2d. Cir. and up to all the other federal circuits to bury (unpublish) tens of thousands of cases in these circuits of Civil Rights Conspiracies **violating** USSC Decisions in: (1) Dennis, supra. (2) Foman, supra. and (3) Haines, supra. Tom asserts that 2d Cir. and every other federal circuit that misuses Local Rules such as § 0.23 and 34 (c) and (d) **decided (for all circuits) an important question of federal law that has not been, but should be, settled by the Supreme Court** favoring grant of Writ to TOM Petition.

TOM now addresses another Fed. R. Civ. P. 11 false statement in PBW&T Brief citation on page 12 'Thus, the denial of the request of an adjournment is not a matter susceptible to review by the Supreme Court. In any case, it is settled that a **PARTY has no constitutional entitlement** to make a oral argument before a judicial tribunal. See FCC v. WJR Goodwill Station, Inc., 337 U.S. 265, 274-77 U.S. 265, 274-77 (1949), (TOM Bold, CAP).

It is not **"settled that a PARTY has no constitutional entitlement to make a oral argument before a judicial tribunal"** solely based upon FCC, supra. as asserted by PBW&T. (1) WJR was **not a PARTY** in the case that WJR attempted to Orally argue. (2) The USSC **remanded** this case for on-the-merits consideration of WJR's Petition to become a **PARTY**. (3) "It follows also that **we should not undertake to generalize more broadly than the particular circumstances** require upon when and under what circumstances procedural due process may require oral argument." (top pg. 277). "-the question (is) whether (WJR) has standing to appear as **PARTY** aggrieved." (bottom page 284). TOM added bold, caps, underline. PBW&T has, for the third time, made a false citation per Fed. R. Civ. P. 11 to a federal court.

TOM moved both S.D.N.Y. and 2d. Cir. to assess sanctions for both prior false citations. TOM moves the USSC for an award of sanctions against PBW&T under Fed. R. Civ. P. 11. **PBW&T will continue to lie to federal courts** until one federal court acts!

3. PBW&T MONROE CITATION FAVORS GRANT OF TOM WRIT.

PBW&T Brief page 13 argues Monroe v. Pape, 365 U.S. 167 (1961) (see Par. "Second:) as alleged basis to deny writ. But Monroe, supra. released only the City of Chicago as not being a "Person" under 42 USC § 1983 "acts under color of state law". Police Officers took many Warrantless actions not authorized by City of Chicago that are clear U.S. Constitutional violations. The USSC reversed both lower federal court decisions with

respect to the police officers holding these persons as liable under 42 USC § 1983. The **primary issue is:** "42 USC § 1983 provides a federal remedy though the state remedy, adequate in theory, is not available in practice" (page 167 Civil Rights § 12.5 - remedies - purpose of statute Headnote). **Conspiracy** in Dennis, supra. is **clearly distinguished** from Monroe, supra.

4. PBW&T OTHER TWO CITATIONS' ARGUMENT ARE DISTINGUISHED FROM MOORE V. PBW&T ET. AL. AS BEING IRRELEVANT

TOM record for USSC consists of: 90% Legal citations, experienced appellate USSC Admitted Legal Argument and facts only added to confirm legal issues. TOM 11/15/94 Motion is 96% Legal Argument, court documents and court record of legal pleadings. PBW&T's assertion that USSC will not "review evidence and discuss specific facts" has no relevance to Moore v. PBW&T Writ Brief and Hearing.

> PBW&T argues: 'The scope of the private defendants' acts is a fact-specific inquiry, and Certiorari is rarely granted when the asserted error consists of erroneous factual findings. United States v. Johnson, 268 U.S. 220, 227 (1925) see Texas v. Mead, 465 U.S. 1041 (1984) (Stephens, J.).'
>
> TOM, concurrently argues in opposition to: PBW&T final arguments (pg. i 2. Whether the Court of Appeals and the District Court erred in failing to find evidence of a conspiracy among the law firm, one of its partners and the federal and New York State judiciary? 3. Whether the Court of Appeals summary order impermissible lacked justifying reasons?) These arguments are repeated on PBW&T page 11 2nd par. (2) and (3).

PBW&T admits that TOM filed a Motion to amend on 11/15/94 that SDNY denied on 11/18/94 without stating any reason. TOM had been prevented from filing the record of both NYS courts as was fully explained to SDNY. TOM therefore had to both file a large portion of the Record of the NYS Courts including TOM Petition **Appendices D & E.** TOM's 53

page Amended Complaint primarily addresses Appendices D & E of 8 pages with additional Legal Argument from TOM NYS appellate experienced attorneys of 137 pages. TOM Amended Complaint examines 31 pages of legal argument filed by PBW&T in NYS courts that is also included in TOM 11/15/94 Motion. Because of all aforementioned data, TOM 11/15/94 Motion contains Two Hundred and Ninety Eight pages of **Legal Argument that fully explains TOM 260 Factual Valid Causes of Action as evidence of the blatant conspiracy between PBW&T and all six NYS Justices, and Cuomo or the NYS Judiciary.**

The reason that U.S.D.C., S.D.N.Y. and 2d. Cir. "erred in failing to find evidence of a conspiracy among the law firm, Mr. Winter and the state judiciary" argument by PBW&T is that neither federal court read these 298 pages! 2d. Cir. Three Judge Panel refused to read TOM Appellants Brief or Reply Brief.

> Evidence of 2d Cir's. failure is contained on TOM Reply Brief page 34: - Polur v. Raffe, 912 F. 2d 52 (2d Cir. 1990) cert. denied. 499 U.S. 937 (1991) Page 43 Holds: 'Finding that judicial immunity bars civil rights (42 USC §s 1983 & 1985) claims **does not require dismissal of action against private parties who are accused of conspiring with judge."**

TOM states the above quotation from TOM Reply Brief is evidence that 2d cir. conspired with defendants PBW&T and Winter when said Panel signed TOM Appendix A page 17a par. two.

5. PBW&T'S ERRORS FAVOR GRANT OF TOM WRIT.

PBW&T re-reargues that Mary was an "at-will" employee and hopes the two NYS Orders' citation of Murphy, supra. **Appendices E & F** will harm granting of TOM Writ. Mary was not "at-will". This is legally argued in immense detail in the record at all four courts.

> PBW&T pages 5 and 6 state: 'The (NYS Court) motion was denied on July 23, 1993' - **'More than two years later**, - on January 14, 1994 - on April 14, 1994 (TOM) filed two actions

pro se in SDNY. TOM believes 7/23/93 to 1/14/94 is less than **6 months** and 7/23/93 to 4/14/94 is less than **nine months.**

CONCLUSIONS

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

Thomas W. Moore

Thomas W. Moore

Mary L. Moore

Mary L. Moore

February 29, 1996